

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Kelly Joe Simon,)
)
Plaintiff,) **ORDER**
)
vs.)
)
Leann Bertsch, Tim Schuetzle, Pat Branson,)
Wes Wood, and Warren Emmer,)
)
Defendants.)

Case No. 1:10-cv-026

The plaintiff, Kelly Joe Simon (“Simon”), is an inmate at the North Dakota State Penitentiary (“NDSP”). He initiated the above-entitled action on April 13, 2010, by lodging with the court a complaint pursuant to 42 U.S.C. § 1983 along with an application to proceed *in forma pauperis*.

Simon alleged in his complaint to having been assaulted or otherwise abused by an NDSP correctional officer. Notably, he did not request any monetary damages in his prayer for relief. Rather, he implored the court to "find the officer unsuitable and/or unfit to work around inmates" and to "make sure this official can no longer hold or possess the power of a staff official." (Docket No. 3).

The undersigned conducted an initial screening of Simon’s complaint as mandated by 28 U.S.C. §1915A. Concluding that Simon was not entitled to the relief he had requested, the undersigned issued a report on May 5, 2010, recommending that the court deny Simon’s application to proceed *in forma pauperis* and dismiss his complaint without prejudice.

On May 25, 2010, Simon filed a document captioned “Supplemental Complaint and Objection to Report and Recommendation.” Therein, he invoked his Eighth and Fourteenth Amendment rights, intimated that the abuse by NDSP correctional officers had been systemic, and

demanded injunctive relief as well as \$750,000 in damages. In short, he attempted to address the deficiencies that the undersigned had identified in his complaint.

The undersigned construes Simon's "Supplemental Complaint and Objection to Report and Recommendation" as a request for leave to amend his complaint. Given the posture of this case coupled with the fact that Simon is proceeding pro se, the undersigned is inclined to grant Simon's request. Accordingly, the undersigned **VACATES** his Report and Recommendation (Docket No. 4) and **GRANTS** Simon leave to file an amended complaint (incorporating all of his claims and requests for relief) with the court by June 18, 2010. Simon is further advised that his amended complaint remains subject to a § 1915A screening. No opinion is expressed as to the sufficiency of the pleading against Defendants Bertsch, Schuetzle, Branson, and Emmer given that there is no respondeat superior liability under § 1983 and the liability of supervision is otherwise limited. Likewise no opinion is expressed as to the sufficiency of the claim for injunctive relief in terms of the specificity of the pleadings, keeping in mind that conclusory allegations are generally not sufficient.

IT IS SO ORDERED.

Dated this 8th day of June, 2010.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr.
United States Magistrate Judge